

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:03-cr-67
)	
Andrew Albert Meng,)	
)	
Defendant.)	

Report and Recommendation

On December 11, 2003, Andrew Albert Meng (“Meng”) was sentenced by the Honorable Ralph R. Erickson to a term of three years of probation for the offense of theft by an employee of a gaming establishment on Indian lands, in violation of 18 U.S.C. § 1168(a). Meng has been supervised by a probation officer in the District of South Dakota. A petition was filed in January 2006 alleging Meng violated several conditions of his probation. On February 22, 2006, Judge Erickson held a violation hearing and modified the conditions of Meng’s probation. Meng was placed in Winner, South Dakota at the Winner Work Release Programs. He successfully completed the program at Winner and was allowed to return to his home in Sisseton, South Dakota on June 7, 2006.

A petition was filed in this court on July 25, 2006, alleging that “[o]n or about 6/25/06, Andrew Albert Meng did use . . . alcoholic beverages, in violation of Special Condition No. 3 of the Conditions of Probation.” Meng was arrested in South Dakota on August 1, 2006. He appeared in the District of South Dakota and was removed to this court. Meng first appeared in this court on August 3, 2006, represented by attorney Christopher Lancaster, from the Federal Public Defender’s Office. Meng was released pending a hearing on the alleged violation, scheduled for August 11, 2006. On August 11, attorney Lancaster stated that Meng intended to

deny the alleged violation and requested requested additional time to prepare for the violation hearing. The hearing was continued until August 23, 2006.

The magistrate judge held a violation hearing on August 23, 2006. Meng again appeared with attorney Lancaster. Brett Shasky, Assistant United States Attorney, appeared on behalf of the government, along with Donna Urff, probation officer.

The parties moved to amend the petition to allege an instance of alcohol usage on July 23, 2006 rather than June 25, 2006. Specifically, item number 5 on page three of petition, would be amended to state: "On or about 7/23/2006, Andrew Albert Meng did use alcoholic beverages, in violation of Special Condition No. 3 of the Conditions of Probation." The court **GRANTED** the amendment to the petition. Meng admitted the amended allegation, and the magistrate judge finds that his admission was voluntary and knowingly made, and that it has a basis in fact. Accordingly, the magistrate judge recommends a finding that a violation of a condition of supervision has occurred.

Meng's violation constitutes a Grade C violation. See USSG §7B1.1(a). For a Grade C violation, the court may revoke probation or supervised release, or extend the term of probation or supervised release, and/or modify the conditions of supervision. Meng was originally sentenced with a criminal history of category I. Under USSG § 7B1.4, the range of imprisonment for a Grade C violation for a defendant with a criminal history category of I is three to nine months. Meng was originally sentenced to three years of probation. Meng's term of probation would expire on December 10, 2006.

The government recommended the court revoke the remaining term of Meng's probation, and he be sentenced to serve a term of imprisonment until December 10, 2006. No term of supervised release would follow his term of imprisonment. Meng and his attorney agreed with the proposed disposition. The magistrate judge finds the recommended disposition appropriate

and recommends Meng's term of probation be revoked and he be sentenced to serve a term of imprisonment until December 10, 2006.

Attorney Lancaster requested that Meng's release be extended and that he be allowed to voluntarily surrender to ensure placement in a minimum security facility. The government resisted the request. The magistrate judge directed Meng to surrender to the U.S. Marshal on Monday, August 28, 2006.

Attorney Lancaster also requested that the court recommend that Meng be placed in close proximity to his family in northern South Dakota to serve his sentence. Such a recommendation is appropriate under the circumstances.

The parties have waived their right to object to this Report and Recommendation, so an order and judgment may issue immediately. The court's order should include a provision that Meng voluntarily report to the U.S. Marshal in Fargo, North Dakota on Monday, August 28, 2006 by 4:00 p.m.

In summary, **IT IS RECOMMENDED** that the court order that:

1. Meng has violated Special Condition No. 3 of his Probation.
2. Meng's term of probation be revoked, and he be sentenced to serve a term of imprisonment until December 10, 2006.
3. Meng surrender himself to the U.S. Marshal in Fargo, North Dakota by 4:00 p.m. on Monday, August 28, 2006.

Dated this 24th day of August, 2006.


Karen K. Klein
United States Magistrate Judge